LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
SEP 30 1970
E. ROBERT SEAVER, CLERK

No. 372

In the Supreme Court of the United States

OCTOBER TERM, 1970

ADAM WILSON, ET AL., PETITIONERS

v.

WINTON M. BLOUNT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
WILLIAM D. RUCKELSHAUS,
Assistant Attorney General,
ALAN S. ROSENTHAL,
ANTHONY J. STEINMEYER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 372

ADAM WILSON, ET AL., PETITIONERS

v.

WINTON M. BLOUNT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. 32–46) is reported at 309 F. Supp. 263. The opinion of the court of appeals (Pet. App. 49–50) is reported at 422 F. 2d 866.

JURISDICTION

The judgment of the court of appeals was entered on March 3, 1970. On May 23, 1970, Mr. Justice White extended the time for filing a petition for a writ of certiorari to July 1, 1970, and on July 7, 1970, Mr. Justice Marshall granted a further extension to

405-186—70

July 10, 1970. The petition for a writ of certiorari was filed July 9, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a blind operator of a vending stand in one federal building has a right under the Randolph-Sheppard Act and applicable regulations, to a preference in operation of, or profits from, vending machines located in another federal building.

2. Whether, assuming the operator has no preferential right, he, and the state agency licensing blind operators of vending stands and machines, have standing to challenge the disposition of profits from these machines by government officials.

STATUTE INVOLVED

Section 1 of the Randolph-Sheppard Act, 20 U.S.C. 107, provides:

> Operation of vending stand authorized; preferences.
>
> For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of sections 107–107f of this title shall be authorized to operate vending stands on any Federal property where such vending stands may be properly and satisfactorily operated by blind persons. In authorizing the operation of vending stands on Federal property, preference shall be given, so far as feasible, to blind persons licensed by a State agency as pro-

vided in said sections; and the head of each department or agency in control of the maintenance, operation, and protection of Federal property shall, after consultation with the Secretary, and with the approval of the President, prescribe regulations designed to assure such preference (including assignment of vending machine income to achieve and protect such preference) for such licensed blind persons without unduly inconveniencing such departments and agencies or adversely affecting the interests of the United States.

STATEMENT

This action for declaratory and mandatory relief was originally brought by Adam Wilson, a blind vending stand operator in the Federal Building in Kansas City, Kansas, against the Postmaster General, the Commissioner of the General Services Administration, two regional postal officials, the Kansas State Board of Social Welfare (Division of Services for the Blind), and the Canteen Corporation, a Delaware corporation. During the pendency of the action, Adam Wilson died and another blind individual, Joe Loya, was assigned his vending stand concession. Loya then brought substantially the same action, this time in conjunction with the State Board of Social Welfare, against the same four individual federal defendants. The actions were then consolidated and summary judgment was granted for the federal officials.[1] The court of appeals affirmed *per curiam*.

---

[1] Canteen Corporation, a defendant in the Wilson action only, did not appear in the litigation and was not a party to the appeal.

The facts are not in dispute. Petitioner Loya, as was Wilson, is licensed to run the vending stand in the Federal Building by the Kansas State Board of Social Welfare, Division of Services for the Blind (the "State Board") (Pet. App. 39). This arrangement is sanctioned by Section 1 of the Randolph-Sheppard Act, 20 U.S.C. 107, and is not in issue here.

Loya (and Wilson before him) also receives the income from certain automatic vending machines located in the Post Office Building, some two miles away from the Federal Building in which his stand is located (Pet. App. 40). In the 1958 application for space for these machines it was expressly agreed that "this stand [consisting of fifteen vending machines] will be removed by the licensing agency [*i.e.*, the State Board] at any time upon request of the Federal Department in charge of this building," in this case the Post Office Department (*Ibid*).

The Post Office Department recently entered into various agreements with postal employee organizations providing for their operation of automatic vending machines in the Post Office Building (Pet. App. 30). The State Board was informed that the machines it had installed were to be removed to make way for others to be operated by the employee organizations (Pet. App. 26–31). The vending stand in the Federal Building was not affected by this order (Pet. App. 42). Petitioners brought these actions seeking to restrain the Post Office officials from carrying out any plans which would deprive Wilson (and later Loya) of the income from the machines.

ARGUMENT

1. Both lower courts correctly determined that the blind operators are not legally entitled to the vending machine profits. The Randolph-Sheppard Act provides a preference to the blind in operating vending stands. In 1954, Congress considered proposals which would also have given preference to blind operators with respect to vending machines. See 100 Cong. Rec. 9923, 9958. After balancing the competing interests of employee organizations (100 Cong. Rec. 9895–9896, 9958–9960), however, Congress refused to extend the statutory preference to include vending machines. See 100 Cong. Rec. 10829–10831. The Act was amended merely to authorize agencies to regulate vending machine income "to achieve and protect such preference." The Post Office regulation regarding vending machine proceeds (39 C.F.R. 743.5) provides for assignment to a blind operator of a lobby stand of profits from vending machines operated "either in conjunction with his stand or in other areas of the same building * * *." The courts held below that this regulation was valid and that since petitioner Loya's stand is in a different building located two miles away from the machines in question, he had no right to the proceeds from them (Pet. App. 41–45).

Petitioners cannot alternatively base their claim upon a contractual right. As the district court found the Post Office and the licensing agency, in providing the space to install the vending machines, agreed that the machines would be removed at any time upon request of the Post Office (Pet. App. 40).

2. Petitioners' main contention is that the lower courts erred in holding petitioners lack standing to challenge the disposition by the Post Office of vending-machine profits after it has been established that they have no right in the profits (Pet. 15–17). The "interest sought to be protected" by petitioners is not, however, "arguably within the zone of interests to be protected or regulated by the statute * * * in question." *Association of Data Processing Service Organizations, Inc.* (*ADAPSO*) v. *Camp*, 397 U.S. 150, 153. For, as shown above, the protection petitioners seek was considered and withheld by Congress in the 1954 amendments to the Randolph-Sheppard Act and there is no other basis on which they can ground their claim. Thus, while petitioners may fall generally within the class of persons protected by the Act, the *interest* they here assert—in the alternative disposition of funds in which they have no right by statute or regulation—has been specifically excluded from protection. Both lower courts therefore correctly held petitioners lack standing on this issue.

3. In any event, petitioners' claim that the Post Office acted arbitrarily and illegally in allocating proceeds from the machines to employee organizations is without merit. Petitioners rely upon two rulings of the Comptroller General in asserting the illegality of

---

The court of appeals decisions concerning standing which petitioners assert are in conflict with the decision below were all rendered prior to *ADAPSO*.

allocating vending machine profits to employee organizations. However, the record shows that the Comptroller General, whose office certifies the balances of the Postmaster General's accounts, 31 U.S.C. 72, does not object to the use of vending machine profits for the benefit of Post Office employee general welfare activities. (see B-112840, Pet. App. 59–63). The letters from postal officials upon which petitioners rely (Pet. App. 26–31), explaining the reasons for their decision, which is limited to vending machines in employee areas of the building, do not show that it was arbitrary but rather that it was carefully considered.

4. Finally, the Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 719, removes any basis for petitioners' claim to proceeds from the vending machines after August 12, 1970, when it was enacted. Section 1003 of the Act, 84 Stat. 730, expressly grants to the Postal Service the authority to "fix the compensation and benefits of all officers and employees in the Postal Service." The Act also broadly provides for the modification of the existing "[c]ompensation, benefits, and other terms and conditions of employment" through collective bargaining with employee labor organizations. See Section 1005(f), 84 Stat. 732. And petitioners cannot assert any injury prior to August 12, 1970 because, we are advised, the blind operators have continued to operate the vending machines in issue while this litigation has been pending.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General.

ALAN S. ROSENTHAL,
ANTHONY J. STEINMEYER,
Attorneys.

OCTOBER 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970

